In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 581

JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC., (JAPWANCAP, INC.), PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On December 15, 1964, petitioner, a Philippine corporation, filed suit in the Court of Claims, seeking compensation, *inter alia*,[1] for counterfeit Japanese occupation currency held by it which had been intro-

[1] In addition, petitioner, in the court below, sought redemption by the United States of the occupation currency issued by the Japanese military forces, and payment by the United States of the claims of its members against Japan for loss of life and physical destruction. These claims have been abandoned in this Court (Pet. 4).

duced by the United States into the Philippine World War II economy for the support of its agents during the Japanese occupation of that country.[2] The Court of Claims dismissed the action as untimely, the relevant events having occurred no later than September 2, 1945. (373 F. 2d 356; Pet. App. 2.) This holding is clearly correct and no further review is warranted.

1. Petitioner's claim that the United States concealed its acts with respect to the counterfeit currency in such a fashion as to prevent it from discovering the facts or from being put on notice, so that the limitations bar was prevented from running, is wholly without merit. As the Court of Claims noted (Pet. App. 5a), the Encyclopedia Brittanica Year Book of 1946 specifically mentioned the issuance of this currency by the United States Army, and in 1947 an article in a leading financial journal referred to the distribution of the occupation currency by the United States (Pet. App. 6a).[3] Thus, it is difficult to understand petitioner's contention that the United States fraudulently concealed the fact of its use of bogus occupation currency (Pet. 2), especially in light of the letters by its President in 1952, 12 years prior to the filing of this action, to Mrs. Eleanor Roosevelt[4] and to the President of the General As-

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[2] All facts alleged in the petition in the Court of Claims are taken as true for present purposes.

[3] Defendant's Exhibit A attached to Defendant's Motion to Dismiss Amended Petition.

[4] Defendant's Exhibit B attached to Defendant's Motion to Dismiss Amended Petition.

sembly of the U.N.,[5] specifically asserting that the United States Army had falsified occupation currency.[6]

2. We also note briefly that, aside from the question of limitations, the claim could not prevail.

a. By agreement of 11 September, 1946, between the governments of the Republic of the Philippines and the United States[7], the United States undertook to pay (and subsequently did pay) to the Philippines $25,000,000.00,

> On account and in part payment of the financial obligations and responsibilities of the United States arising from: (1) the issuance in the Philippines of emergency currency, guerilla currency, military scrip or other writing intended to circulate as money, the issuance of which was duly authorized, * * *.

The government of the Philippines, in consideration therefor, agreed that it,

> hereby releases and acquits the United States of the unpaid balance of the financial obligations

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[5] Defendant's Exhibit C attached to Defendant's Motion to Dismiss Amended Petition.

[6] In its petition for rehearing below, petitioner asserted that its 1952 letter to Mrs. Roosevelt constituted the timely filing of a claim in the Court of Claims under *Honda* v. *Clark*, 386 U.S. 484. This contention has apparently been abandoned in this Court.

[7] Agreement No. W-ANL (PA-I)—4530, Agreement Between the United States and the Philippines for the Sale of Certain Surplus War Property, executed, on behalf of the Republic of the Philippines, by President Manuel Roxas.

> and responsibilities aforesaid and shall forever indemnify and hold the United States harmless from all claims and demands of every nature arising therefrom by any person or persons whomsoever.

Article 5(b). Thus petitioner's only remedy, if it had any valid claim, would be against its own government, not against the United States. Cf. *United States* v. *Chemical Foundation*, 272 U.S. 1, 11; *United States* v. *Pink*, 315 U.S. 203.

b. Even apart from the agreement, petitioner's claim would fail. There could be no allegation, of course, that the counterfeit currency, utilized in time of war in enemy-controlled territory, purported to be an obligation of the United States. Nor is there any allegation that the counterfeit currency was discovered by the Japanese to be false, or that it was not accepted at the same rate as the genuine occupation currency. The genuine Japanese occupation currency, of course, became wholly worthless when the Japanese military government left the Philippines. In short, petitioner assertedly holds[8] counterfeit currency which at all times has been worth exactly as much (or as little) as the genuine occupation currency it was thought to be when petitioner's predecessors in interest accepted it. Thus neither petitioner nor its predecessors in interest have suffered damage by reason of the counterfeiting.

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[8] Petitioner's acquisition of this currency, if it is correct in asserting that it constitutes a claim against the government, would appear to be in violation of the Anti-Assignment Act, 31 U.S.C. 203, thus making petitioner's claim void.

c. Even if petitioner or its predecessors in interest were able to assert injury by reason of this exercise of the war powers of the United States, it seems plain, under the decisions of this Court, that no suit to recover therefor could be maintained in the Court of Claims. *United States* v. *Caltex, Inc.*, 344 U.S. 149; *Horowitz* v. *United States*, 267 U.S. 458.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1967.

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